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10/037,278	12/20/2001	Yvette L. Hammonds	17,705	6832

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KIMBERLY-CLARK WORLDWIDE, INC.  
401 NORTH LAKE STREET  
NEENAH, WI 54956

EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 07/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/037,278

Applicant(s)

HAMMONDS ET AL.

Examiner

Karin M. Reichle

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 May 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 71/2.8
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Art Unit: 3761

## **DETAILED ACTION**

### *Specification*

### *Drawings*

1. The drawings are objected to because in Figures 5A-7, the descriptive text should be avoided, i.e. such text could be inserted in the Detailed Description section. Also, in Figures 1A and 1D, the structure denoted 56 does not show an engagement member as described, i.e. see paragraph at page 7, line 5. In Figure 1A, the line from the left 70 should be dashed to denote underlying structure. In Figure 1E, a line from the right 36 should be provided. In Figure 1D, the lines from 56 should extend to engagement members. Also it appears that the lines from the middle 72 and the lower 70 should be dashed to denote underlying structure. In Figure 1F, no quotation marks should be used. A line from each numeral should be provided leading to the structure it denotes and if that structure underlies other structure the line should be dashed. Figures 1A-1D do not show 58, 44 and 60 as described in the paragraph at page 7, line 5. Where is 36' in Figures 1C and 1D? In Figures 2A-2E, where are 110, 112, 114, and 116 as described at page 13, lines 28-31? A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Art Unit: 3761

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the invention of claims 1-27, e.g., the sheets, the core, the adhesive, the perforation lines, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Description*

3. The abstract of the disclosure is objected to because the abstract is too long, i.e. more than 150 words in length. Also, legal terminology, i.e. "comprising", should be avoided. Correction is required. See MPEP § 608.01(b).

4. The disclosure is objected to because of the following informalities: 1) On page 1, in the reference to prior applications, line 1, thereof, "priority...copending" should be --the benefit of --. 2) In the description of FIG. 2C on page 6, line 6, "3C" should be --2C--. 3) On page 4, line 7, after "surface", --of-- should be inserted. 4) In the paragraph at page 9, line 20, lines 3 and 6 thereof, "orienting" should be --orientation of --. 5) In the paragraph to page 7, line 5, on line 7, should --(FIG. 1B)-- be inserted after "72"? 6) In the paragraph at page 10, line 11, why is the first fastener component given two different designations, 70 and 70'? 7) Are the materials in

Art Unit: 3761

claims 3-6, 12-14 and 21-23 and those in Figures 5A-7 one and the same? If so, the structure shown in those Figures should be denoted. 8) In the paragraph at page 7, line 20, should the description refer to Figures 2A-2E? 9) In the description and drawings the wings are referred to both as 36 and as 36'. The same numeral(s) should be used consistently throughout the specification.

Appropriate correction is required.

### *Claim Objections*

5. Claims 1-27 are objected to because of the following informalities: In claim 1, last line after "backsheet", --layer-- should be inserted. This also applies to similar language in the last sections of claims 10, 17 and 27. In claim 10, line 4 appears to be missing a word or words. Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

6. Claims 1-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 3761

In regard to claim 1, the description of the fastener components is unclear, i.e. is a first component and cooperating component required on each wing or just one wing? Is the unengaged first fastener component in the last subsection and one of the fastener components claimed on lines 9-11 one and the same? How many components at a minimum are required? Note the language "the...component" in claims 2 and 4. Also, the description of the components is incomplete, i.e. how are the components positioned with regard to the wings so as to be able to function as set forth in the last two subsections. In regard to claim 6, the discussion of claim 1 supra also applies here with regard to the completeness of the description. In regard to claim 10, see discussion of claim 1 supra which also applies here with regard to similar language. Additionally the preamble and claim body are inconsistent in that the preamble claims a subcombination of an attachment system whereas the claim body claims the combination of the attachment system and a sanitary napkin, i.e. "a first wing extending from...edge...napkin". The preamble and claim body should be consistent. In regard to claims 15 and 24, see discussion of claim 6 supra which applies here to similar language. In regard to claim 17, is the unengaged first fastener component in the last subsection and one of the fastener components claimed on lines 9-11 one and the same, i.e. how many components at a minimum are required? In regard to claim 27, see discussion of claim 17 which applies here to similar language. In regard to claim 28, the description of the fasteners is unclear, i.e. are interengaging fasteners required on each wing or just one part on one wing and the other part on the other wing. Is the fastener component in the last subsection and one of the fasteners claimed on lines 2-3 one and the same? How many

Art Unit: 3761

components at a minimum are required? Also the description of the components is incomplete, i.e. how are the components positioned with regard to the wings so as to be able to function as set forth in the last two subsections.

*Claim Rejections - 35 USC § 102*

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Hammons et al '484.

In regard to claims 1-28, see Figures 1-10, i.e. the topsheet is 22, the backsheet is 26, the core is 24, the adhesive and the peel strip are 58-59, the first and second wings are 34, 36, see also paragraphs 84-87 of Hammons et al, the fastener components are 102, 104, see also

Art Unit: 3761

paragraphs 88-99, 107 and 108, and thereby Scripps '724 at col. 12, lines 36-42, and thereby Noel et al '520 at , e.g., Figures, col. 6, lines 48-51 and col. 8, lines 3-9, i.e. nonwoven pattern unbonded loop material. See also Figures 6-8 and paragraphs 121-123, i.e. the fastener component is the one fastener 102, 104 directly adjacent exterior of the undergarment. It is noted that both components, i.e. the hooks and loops, include engagement members, see page 12, lines 11-12 of the instant specification. The last two subsections of claims 1, 10, 17, and 27 and lines 2 and 4 of claim 28 recite capabilities, function or properties of the claimed structure. The Hammons et al device includes all the claimed structure. Therefore there is sufficient factual basis for one to conclude that the capabilities, functions and properties of such claimed structure is also inherent in the same structure of Hammons et al , see MPEP 2112.01.

In regard to claims 2-3, 11-12 and 19-21, also see Figure 11, and paragraph 123.

In regard to claim 26, see also elements 160 and 161 and paragraphs 160-164.

9. Claims 1, 6-10, 15-18 and 24-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Bien '929, and thus Mattingly '047.

With regard to claims 1, 6-10, 15-18 and 24-28, see Figures of Bien, i.e topsheet is 28, the backsheet is 30, the core is 32, the adhesive and peel strip are 34, 36 and the flaps and fastener components are set forth at col. 7, lines 29-59, and thereby Mattingly '047 at col. 6, line 44-col. 7, line 5, col. 2, lines 17-32 and col. 8, lines 9-41. It is noted that the portions of Mattingly are considered to teach that the cohesive structure in Figure 10 could be adhesive or VELCRO instead, i.e. the fastener component is the one fastener directly adjacent exterior of the

Art Unit: 3761

undergarment. It is noted that both components, i.e. the hooks and loops of the VELCRO, include engagement members, note page 12, lines 11-12 of the instant specification. The last two subsections of claims 1, 10, 17 and 27 and lines 2 and 4 of claim 28 as well as claims 6, 15, 18, 24, and 26 recite capabilities, function or properties of the claimed structure. The Bien reference teaches a device which includes all the claimed structure. Therefore there is sufficient factual basis for one to conclude that the capabilities, functions and properties of such claimed structure is also inherent in the same structure of Bien et al, see MPEP 2112.01.

*Claim Rejections - 35 USC § 103*

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was

Art Unit: 3761

made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 4-5, 13-14 and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bien '929 in view of Leak et al, '041.

Applicant claims the cooperating fastener component being of nonwoven loop material and a pattern unbonded material whereas Bien only teaches that such is a loop material. However, see Leak et al, col. 1, lines 40-50 and col. 8, lines 55-59 and abstract. To employ a pattern unbonded nonwoven loop material as taught by leak et al on the Bien device as the loop material would be obvious to one of ordinary skill in the art in view of the recognition that Bien teaches a situation in which hook and loop fasteners have been employed and that such would also be economically efficient which would be desirable in any disposable article and the article of Bien being disposable.

12. Claims 2-3, 11-12 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bien '929 in view of Osborn III, '884.

Applicant claims nonisotropic engagement members oriented orthogonally to the attachment direction which Bien does not teach. Bien does teach the desire to use the flaps to properly position the article in the undergarment. See also Osborn III '884, Figures 44-45 and col. 45, line 67-col. 46, line 1, i.e. hooks oriented in the direction shown in the Figures improves gripping properties. To make the hooks of Bien nonisotropically formed and orthogonally

Art Unit: 3761

oriented relative to the direction of attachment as taught by Osborn would be obvious to one of ordinary skill in the art in view of the recognition that such would improve gripping, i.e. securement would be improved which would better insure proper positioning of the article in the undergarment, i.e. accidental loss of securement would lead to improper positioning, and the desirability of proper positioning by Bien.

### *Double Patenting*

13. Due to the number of claims under consideration and the lack of clarity thereof, i.e. see rejections supra, for the purposes of the following rejections the invention of the claims of the instant application will be considered a sanitary napkin with a pair of wings having selectively releasable interengaging fasteners and another fastener component including a plurality of engagement members which fasteners and fastener component are capable of fastening the napkin to an undergarment, see, e.g., claim 28. The invention of the '277 application('740 published application) will be considered to also be a sanitary napkin with a pair of wings having selectively releasable, interengaging fasteners and another fastener component including a plurality of engagement members which fasteners and fastener component are capable of fastening the napkin to an undergarment but the sanitary napkin additionally includes an garment attachment adhesive and a peel strip and the napkin structure is capable of or used in a method which includes fastening the wings over the top of the napkin during removal of the peel strip, positioning the

Art Unit: 3761

napkin in the undergarment with the adhesive and disengaging the wings from over the napkin to under the napkin and around the undergarment to further secure the napkin in the undergarment, see, e.g., claim 9 of that application. The invention of the '287 application('856 published application) will be considered to also be a sanitary napkin with a pair of wings having selectively releasable, interengaging fasteners but the sanitary napkin additionally includes each of such wings including a first fastener component and a cooperating fastener component whereby the wings are fastenable to one another by fastening one first fastener component on one wing to a cooperating fastener component on the other wing, i.e. the other first fastener component and cooperating component are not engaged with each other, and each of the first fastener components includes a plurality of nonisotropic engagement members such that the component has an axis of maximum engagement which axis is generally orthogonal to the direction of attachment, see, e.g. claim 40.

14. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground

Art Unit: 3761

provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

15. Claims 1- 28 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 and claims 1-48 of copending Application No. 10/037,277(published Application No. 2003/0036740) and Application No. 10/037,287(published Application No. 2003/0045856), respectively. Although the conflicting claims are not identical, they are not patentably distinct from each other because since the effective filing dates of all the applications is the same, the one way In re Vogel test applies, i.e. are the claims of the instant application obvious in view of the other applications. The answer is yes. As best understood, see discussion supra, the claims of the instant application are generic to or broader than the claims of the other applications. Once an applicant has received a patent for a species or more specific embodiment, he(she) is not entitled to a patent for the generic or broader invention. This is because the specific anticipates the broader. See In re Goodman, supra.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Art Unit: 3761

*Ownership*

16. Claims 1-28 are directed to an invention not patentably distinct from claims 1-19 and 1-48 of commonly assigned Application No. 10/037, 277(published Application No. 2003/0036740) and Application No. 10/037,287(published Application No. 2003/0045856), respectively. Specifically, see the double patenting rejection in the preceding section.

17. The U.S. Patent and Trademark Office normally will not institute an interference between applications or a patent and an application of common ownership (see MPEP § 2302). Commonly assigned '277('740) and '287('856), discussed above, would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned case qualifies as prior art under 35 U.S.C. 102(f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application was made. In order for the examiner to resolve this issue, the assignee is required under 37 CFR 1.78© and 35 U.S.C. 132 to either show that the conflicting inventions were commonly owned at the time the invention in this application was made or to name the prior inventor of the conflicting subject matter. Failure to comply with this requirement will result in a holding of abandonment of the application.

A showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. 103(a) based upon the commonly assigned case as a reference under 35 U.S.C. 102(f) or (g), or 35 U.S.C. 102(e) for applications filed on or after November 29, 1999.

Art Unit: 3761

*Conclusion*

18. Any inquiry concerning this communication should be directed to K. M. Reichle at telephone number 703-308-2617. The Examiner's regular work schedule is Monday-Thursday. The Official RightFAX number is 703-872-9302.

K.M. Reichle  
KACIN REICHS  
EXAMINER

KMR

June 25, 2003